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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/646,156

08/22/2003

Bruce Young

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9592

32709 7590 08/19/2008

GATEWAY, INC.

ATTN: PATENT ATTORNEY

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EXAMINER

SIDDIQI, MOHAMMAD A

ART UNIT

PAPER NUMBER

2154

MAIL DATE

DELIVERY MODE

08/19/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/646,156	Applicant(s) YOUNG, BRUCE	
	Examiner MOHAMMAD A. SIDDIQI	Art Unit 2154	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 July 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 1-6 and 19-22.
Claim(s) withdrawn from consideration: None.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Nathan J. Flynn/
Supervisory Patent Examiner, Art Unit 2154

In Response to Applicant's argument, Drosset does not disclose "streaming content format prevents storage of the content; wherein said archival format allows storage of the content ...", (page 9), the examiner respectfully disagrees. Drosset discloses wherein said streaming content format prevents storage of the content (streaming application present less opportunity for user to copy, col 5, line 65 to col 6, line 10, as it is described in the page, 7, paragraph 22, of the instant application); wherein said archival format allows storage of the content (download audio data files, col 2, lines 38-52, col 3, lines 20-34, MP3 format). Drosset further discloses the first format and the second streaming content format preventing storage of the transmitted content on the storage media of the user (stream audio, fig 7, Microsoft media services col 7, lines 1-5; streaming application present less opportunity for user to copy, col 5, line 65 to col 6, line 10, as it is described in the page, 7, paragraph 22, of the instant application).

Note: The examiner regrets typographical error in the Response of "Response to Arguments" section of the final action mailed on 05/23/2008 response of the arguments, the correction is following:

Argument: Drosset does not disclose the second streaming content format preventing storage of the transmitted content on the storage media of the user.

Response: Drosset discloses the first format and the second streaming content format preventing storage of the transmitted content on the storage media of the user (stream audio, fig 7, Microsoft media services col 7, lines 1-5, the prior teaches streaming content which can not be stored by using software Microsoft media services, Further teaches MP3, content can be downloaded that anticipates storing on the client device).

In response to Applicant's argument, Drosset does not disclose " the delivering of the particular piece of the content in the second archival format to the storage media of the user occurs concurrently with the transmitting of the content in the first streaming content format", page 11, the examiner respectfully disagrees. Drosset discloses the delivering of the particular piece of the content in the second archival format to the storage media of the user occurs concurrently with the transmitting of the content in the first streaming content format (fig 7, col 2, lines 38-52, col 3, lines 20-34, col 6 line 65 – col 7, line 5).

In response to Applicant's argument, Drosset does not disclose " the receiving of the request to store the particular piece of the content occurs during the transmitting of the content in the first streaming content format , and the delivering of the particular piece of the content in the second archival format to the storage media of the user occurs concurrently with the transmitting of the content in the first streaming content format". the examiner respectfully disagrees. Drosset discloses the receiving of the request to store the particular piece of the content occurs during the transmitting of the content in the first streaming content format (fig 7, col 5, line 65 to col 6, line 10), and the delivering of the particular piece of the content in the second archival format to the storage media of the user occurs concurrently with the transmitting of the content in the first streaming content format (stream Audio, fig 7, col 2, lines 38-52, col 3, lines 20-34).